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Central Intelligence Agency



Washington, D.C. 20505

OLL#84-0977

14 MAR 1984

Mr. James M. Frey
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request for the views of the Central Intelligence Agency (CIA) on a draft General Services Administration (GSA) bill which would amend Title 44, United States Code, to provide that the Administrator of General Services, in consultation with the Archivist of the United States and the head of the creating federal agency, shall determine whether a document, recording, or other document created or received by the Agency in the course of conducting its business is a "record". The bill also provides for the inspection of Agency files by the Archivist of the United States or his designee in order to insure that documents are properly classified as "record" or "non-record" material. These legislative proposals are similar to certain other GSA proposals which have been periodically submitted by the Office of Management and Budget (OMB) to the Agency for approval, and which have been objected to by the Agency. While this legislation has been slightly modified from the previous GSA proposals, the Agency must continue its objection to this proposal for the reasons stated below.

As we have indicated in previous years, the Agency opposes the provision giving GSA the authority to declare what documents constitute a "record". Even with the added requirement that GSA must consult with the creating agency in making its determination, and that OMB will be final arbiter in case there is disagreement between GSA and the federal agency over what constitutes a record, the proposal is still objectionable because it would allow GSA to examine sensitive documents in order to make a determination as to whether the documents have been properly classified as "records" or "non-records."

Currently, the Agency uses National Archives and Records Service (NARS) guidelines in determining whether or not Agency items are "records". When questions have arisen concerning sensitive operational records, agreements have usually been reached through negotiation and we have acceded to NARS staff determinations when there has been no direct conflict with Agency authorities or the responsibility of the Director of the Central Intelligence Agency (DCI) to protect intelligence sources and methods. We cannot, however, support any legislation which would jeopardize the authority of the DCI to carry out his statutory responsibility for the protection of sources and methods pursuant to Section 102(d)(3) of the National Security Act of 1947 and Section 403g of the Central Intelligence Agency Act of 1949. In this connection, we particularly find objectionable the provision that would allow employees of NARS to inspect Agency files to determine whether the items are properly classified as to their record status. We so object even though the legislation provides that NARS employees shall have appropriate National Security clearances because it fails to provide that the CIA shall determine, according to its own expertise and procedures, whether or not any given individual should be given access to CIA records or information. Instead, the bill provides that, in case of disagreement between NARS and the Agency, the matter shall be referred to the Director of OMB, whose decision is final. The DCI, consistent with his statutory responsibilities to protect sources and methods, cannot allow another federal agency to determine whether an individual will be given access to extremely sensitive operational information.

In addition to the objections stated above, the Agency is also concerned that this bill would delay the timely disposal of material contained within our files. Specifically, current GSA regulations allow "non-records" to be disposed of by the Agency without consultation or approval by other federal agencies, whereas disposal of "records" requires prior approval of the Archivist of the United States. If the Administrator of GSA or the Director of OMB has the authority to determine what items are "records", destruction of material could be unduly delayed because the Agency would have to seek affirmation that specific items were clearly not records before they could be destroyed.

Given the continued vigorous objections that this Agency has expressed regarding this proposal, we would appreciate being kept closely informed as to the formulation of an Administration position on this legislation.

Sincerely,

/s/ Clair E. George

Clair E. George
Director, Office of Legislative Liaison

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